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COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE

LEGAL SUBCOMMITTEE

Thirtieth session

SUMMARY RECORD OF THE 540th MEETING

Held at Headquarters, New York,
on Tuesday, 26 March 1991, at 10.30 a.m.

Chairman: Mr. MIKULKA (Czechoslovakia)

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The meeting was called to order at 10.40 a.m.

PARTICIPATION IN THE WORK OF THE SUBCOMMITTEE

1. The CHAIRMAN informed the Subcommittee that he had received a communication from the Libyan Arab Jamahiriya requesting participation in its meetings. Inasmuch as the granting of observer status was a prerogative of the parent committee, the Subcommittee did not need to take any formal decision on the matter. However, the representatives of the Libyan Arab Jamahiriya might attend formal meetings of the Subcommittee and might direct to the Chair a request for the floor if they wished to make a statement. That was the practice observed in past years when States not members of the Subcommittee had communicated with the Subcommittee requesting participation in its meetings. Since there were no objections, he took it that the Subcommittee consented to the request.

2. It was so decided.

GENERAL EXCHANGE OF VIEWS

3. Mr. VILLEGAS (Mexico) thought that the current session would be an exceptional opportunity to make specific progress towards phasing in international space law, for the Subcommittee had nearly finished developing draft principles on the use of nuclear power sources in outer space and it should be possible to reach a consensus on outstanding questions, such as the definition of a launching State and the responsibilities of such a State. Once those efforts were successful, the international community would have a legal framework for outer space activities.

4. At the current session the Subcommittee would also begin consideration of a new item, namely, the legal aspects related to the application of the principle that exploration and use of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries. To that end, it was essential to guarantee all States access to space technology, its use and development, as had been recommended by the United Nations Conference on the Exploration and Peaceful Use of Outer Space (UNISPACE 82) in its report. He urged all delegations, and especially those of the developed countries, to be constructive in their approach to the new item, for which international cooperation was essential.

5. Two other matters were also of great importance. First, the definition and delimitation of outer space, the lack of agreement on the possible need to establish a boundary between airspace and outer space was no reason for dropping that item from the agenda. Mexico supported the Soviet Union's proposal that a discussion of international legal problems relating to aerospace flights should begin. On the second point, the use of the geostationary orbit, the informal working document presented in 1989 by the equatorial countries was a good basis for identifying points of agreement leading to the development of relevant legal principles.

(Mr. Villegas, Mexico)

6. The constant progress of science and technology, which had fuelled the conquest of outer space, and which had had beneficial spin-offs in everyday life but had also been used for military ends, must be accompanied by a vigorous effort aimed at the progressive development of international space law. His delegation repeated its proposal that a new theme should be selected: the applicability of the principle of openness to all space activity, on the basis of the Convention on the Registration of Objects Launched into Outer Space. It was also necessary to examine measures to be taken to ensure the universal application of space law. In addition, his delegation supported the Swedish proposal that the Scientific and Technical Subcommittee should examine the question of space debris, which might also be placed on the agenda of the Legal Subcommittee.

7. The Conference on Disarmament and the Committee on the Peaceful Uses of Outer Space, each of which had the task of preventing the increased militarization of space, should on a priority basis take effective measures to that end and negotiate one or more treaties on the subject, so as to reserve space for exclusively peaceful purposes, in the name of the economic and social development of all peoples - as in fact was called for in their mandates from the General Assembly.

8. Mr. GONZALEZ (Chile) said that space law was part of the body of doctrine defined by the fundamental standards of international law as set out in the Charter of the United Nations and in resolution 2625 (XXV), wherein the General Assembly restated, among other things, the established principle that outer space, including the Moon and other celestial bodies, was not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means. On that legal basis and on the basis of the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, it could be stated that the thrust of the law of space was the concept of the common heritage of mankind, for space activity must be carried out in the interests of humanity and must not give rise to claims of sovereignty.

9. In that connection, space law must define the framework for development of cooperation between States to preserve outer space in the interests of future generations.

10. International law on cooperation, which rested on the said body of doctrine as well as on the Charter of Economic Rights and Duties of States, and particularly article 11 of that Charter, was the organizing principle of a system that transcended the mere coexistence of States by bringing them together in the pursuit of common objectives. Such cooperation was to go hand in hand with the creative participation of all countries in a basic international organization, namely, the United Nations.

11. Cooperation in relation to international law, and, in the case under discussion, space law, implied a principle of preferential treatment

(Mr. Gonzalez, Chile)

calculated to restore equality and balance among all States by benefiting developing countries. It should be recalled, in that context, that all States had the right to benefit from the progress of science and technology, in part through technology transfer suited to the real needs of developing countries. The importance of the assistance which developed countries could provide to developing countries in pure and applied research and by helping them to develop appropriate technology deserved emphasis. That was equally true for the location, development, conservation and legitimate use of natural resources. Developed countries should also try to help developing countries to make a choice among different technologies by fostering a two-way flow of information.

12. There were legal and other deficiencies that should be remedied without delay so that the technological gap between countries did not widen. His delegation gave great importance to the activities to be undertaken by the working group set up to review the new legal item on the agenda.

13. Of all the topics that the Subcommittee must consider during the session, that of the advantages arising from space activity was crucial, and his delegation expected that a new spirit of cooperation and the development of a legal framework would make it possible to establish fairer relations between technically advanced countries and developing countries. The Subcommittee would also have to pronounce on other questions, such as the militarization of space, which Chile saw as particularly important. The Committee on the Peaceful Uses of Outer Space could and should play an important role in the context of the negotiations currently under way in the Ad Hoc Committee on the Prevention of an Arms Race in Outer Space. The fact that the Committee had no mandate to negotiate did however create a dangerous legal void. His delegation agreed that it was necessary to establish confidence-building measures in relation to outer space, essentially through an amendment to the Convention on the Registration of Objects Launched into Outer Space, as had been suggested by Argentina to the Ad Hoc Committee. That proposal by Argentina, which stood for the openness of space activity, was also to be considered by the Subcommittee.

14. The current spirit of consensus gave ground for hoping that the draft principles on the use of nuclear energy sources in outer space would be adopted. It was to be hoped that that spirit would also be shown in other fields, especially in the matter of space debris. As to the definition and delimitation of outer space, his delegation thought that that question should be settled by a convention. The use of the geostationary orbit should be subject to legal regulation, account being taken of the fact that it was a finite and non-renewable natural resource as well as the particular interests of the developing countries, so as to ensure that all countries had equitable access to the geostationary orbit.

15. Conscious of the importance of the work of the current session now commencing, his delegation was ready to join in efforts to establish a legal

(Mr. Gonzalez, Chile)

framework that would be in conformity with the principles of contemporary international law.

16. Mr. BYKOV (Union of Soviet Socialist Republics) recalled that 12 April 1991, the date on which the Legal Subcommittee was to complete its thirtieth session, would mark the thirtieth anniversary of the first manned space flight, which had been effected for peaceful purposes and for the benefit of mankind by the Soviet citizen Yuri Gagarin. To celebrate that anniversary in the context of International Space Year, a special commission had been established in the Soviet Union under the patronage of the President of the Union of Soviet Socialist Republics, M. S. Gorbachev. The national and international activities which would take place on that occasion would undoubtedly foster the development of peaceful cooperation and of a humanistic approach to the search for solutions to problems related to the conquest of outer space.

17. The development of outer space activities, which involved a growing number of States, and the need to maintain the peaceful nature of the uses of outer space made the strengthening of the political and legal functions of the United Nations in that area a topical issue. That view was confirmed inter alia by the attention given by the representatives of many States members of the Legal Subcommittee, at its twenty-ninth session, to the means of developing the institutional bases for international cooperation in outer space. The various States and groups of States naturally had to defend their own objective interests, as shown by the diversity of the approaches which had been proposed for the consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States. As the Subcommittee members already knew, a broad range of ideas and proposals had been put forth on that subject, and although not all of them had been greeted with the desired degree of understanding by certain delegations, there was reason to believe that the activities of the Legal Subcommittee in that area would take a realistic turn and that its members eventually would arrive at a common denominator.

18. It was important to create a political and legal framework for the forms and orientations to be taken by cooperation among States in the various areas of space science and technology, in the interests of all countries and of all peoples, so as to raise their standard of living and to strengthen their general security. It was also appropriate to analyse all aspects of issues related more generally to the outer space activities of all of the States concerned, to the execution of mutually beneficial projects in that area and to the establishment and development of integrated multilateral and bilateral structures for cooperation in the exploration and utilization of outer space. His delegation was convinced that the forthcoming debates would be a constructive means of enhancing the participants' understanding of the problems which States must face. It was particularly important that the work done in the context of the new agenda item should be carried out in a positive

(Mr. Bykov, USSR)

manner, since outer space activities and international cooperation in the peaceful uses of outer space were areas whose development depended on factors and interests which were both universal and national, linked in a complex system of interdependence.

19. The Soviet Union favoured the broadest possible development of mutually beneficial relations of cooperation at both the multilateral and bilateral levels. Since the previous session it had concluded a considerable number of bilateral intergovernmental agreements in that area. In April 1990 it had entered into agreements with the People's Republic of China and the European Space Agency. In October 1990 an agreement between the Soviet and Argentine Governments on cooperation in the exploration and peaceful uses of outer space had been signed in Moscow, along with a related protocol which provided for cooperation in the various branches of outer space science and technology. He hoped that in the near future, many other countries, particularly developing countries, would become partners of the Soviet Union in the exploration and utilization of outer space.

20. His delegation supported the arguments which had been advanced by many delegations in favour of confidence-building measures in outer space, the establishment of general security and transparency in outer space activities. The elaboration of the pertinent legal principles unquestionably lay within the province of the Legal Subcommittee. In that context, he noted the great necessity and importance of establishing legal principles relevant to the use of nuclear power sources in outer space. At its previous session, the Subcommittee had made some progress in that direction; it had adopted by consensus draft principle 3 relating to guidelines and criteria for the safe use of NPS, which had also been approved by the Committee of the Whole.

21. It was well known that the issue of objective liability for transboundary damage was of continuing interest to experts on international law. It was not surprising that various international bodies at the global and regional levels had focused on the problem. The area of outer space was one in which work concerning that type of liability had made the most progress, as indicated by the 1972 Convention on International Liability for Damage Caused by Space Objects.

22. Many circumstances necessitated an urgent search for a satisfactory solution to the problem of liability for damage caused by space objects carrying nuclear power sources. In particular, that consideration had determined the position taken by the Soviet delegation at the twenty-ninth session of the Subcommittee. In that context, he recalled the Soviet proposals concerning a draft principle on compensation for damage caused by a space object carrying an NPS. In order to settle any disputes over such compensation, his delegation had proposed that the Subcommittee should explore the possibility of establishing an ad hoc committee whose decisions would be mandatory.

(Mr. Bykov, USSR)

23. If that proposal were adopted and implemented in a normative text, it would substantially strengthen the concept of material liability. The Soviet Union had also proposed that the application of the aforementioned principle should include a separate provision stipulating that any disputes should be settled through the International Court of Justice. The Soviet Union had appreciated the active support given by many delegations to the proposals it had made at the preceding session of the Subcommittee; it had proposed inter alia a successful version, in its view, of such a draft principle, which took into account both the essence of the proposal concerning the institutional establishment of the idea of the liability of the parties to arbitral decisions and the specific character of all of the legal principles which had been elaborated. Unfortunately, the ideas set forth had not received sufficient support, and the Soviet delegation hoped that the Subcommittee would advance towards a solution to those problems during the current session.

24. With respect to matters relating to the definition and delimitation of outer space and to the utilization of the geostationary orbit, he recalled that the Soviet delegation had proposed the previous year that the Subcommittee should unanimously decide to examine, under that agenda item, the legal aspects of the use of aerospace vehicles at certain altitudes and to conduct an exchange of views on conceptual approaches to the definition of possible parameters in the area of international legal regulation of flights of such vehicles. Consideration of that question would lead to a better understanding of questions related to the delimitation of outer space. He reiterated the proposal and stated that if it was adopted by consensus, the Soviet delegation would be prepared to submit at the next session of the Subcommittee a set of draft articles on questions concerning the regulation of flights of aerospace vehicles.

25. With respect to the question of the geostationary orbit, he felt it was both necessary and feasible to elaborate a legal regime for the utilization of that orbit, which would naturally be based on the principles and norms of international law which were currently in force and which had been established principally by a fundamental instrument, the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies.

26. In its 30 years of existence, the Legal Subcommittee had made a notable contribution to the progressive development of international space law and to the establishment of legal order in outer space activities and, consequently, in the peaceful uses of outer space. Five international instruments and three declarations of legal principles elaborated within the Subcommittee constituted the framework of contemporary international space law. Through that productive body of work, the Subcommittee had earned well-deserved respect from the international community.

27. Mr. ZAWELS (Argentina) said that space law was expected to have an increasing number of applications; accordingly, it was incumbent upon the Legal Subcommittee to develop norms. In that connection, he noted that existing space law had made it possible to resolve in a satisfactory manner the consequences of the breakup of the Salyut-7 space station over Argentine territory, as both the Argentine and the Soviet Governments had fulfilled their obligations in that regard.

28. The issue of space debris should be made a new item on the Subcommittee's agenda without delay, because the proliferation of such debris was liable to jeopardize the space activities of all States and, in particular, of the developing countries which had not yet been able to undertake such activities. One of the most appropriate ways of resolving the issue would be to develop norms stipulating the scope and content of article IX of the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies. On the basis of that norm, effective machinery should be established for prior consultation in cases in which the outer space activities of one State threatened to impede the exercise by other States of their right to conduct such activities. The question whether the activities of one State might constitute an obstacle to the activities of other States should not be left solely to the discretion of the State concerned, but should be considered objectively.

29. His delegation welcomed the progress made at the previous session in the elaboration of draft principles relating to the use of nuclear power sources in space, and hoped that the remaining draft principles would be adopted during the current session.

30. With the support of other delegations, it should be possible to make concrete progress on agenda item 4, whether it was a question of the delimitation of outer space or the geostationary orbit. With regard to delimitation, his delegation continued to be of the view that it was necessary to distinguish between airspace and outer space; in view of the difficulty of reaching a consensus on the need for such a distinction, however, it had supported other initiatives and ideas on the subject. In any event, with regard to that item as well as to the other agenda items, it was important for COPOUS to pursue its mission, which was to develop norms applicable to space activity. Unless an agreement could be reached on the criteria to be used in delimiting outer space, an anarchic situation might develop in which each State would decide for itself.

31. The application of the principle that the exploration and use of outer space should be for the benefit and in the interest of all States raised two questions: first, all countries must be concretely guaranteed non-discriminatory access to space technology; secondly, outer space law must be progressively developed and, in particular, effect must be given to article I of the 1967 Outer Space Treaty. The concept of international cooperation should be further explored, which implied the elaboration of legal

(Mr. Zawels, Argentina)

principles governing the transnational exchange of goods and services arising from space activities, with the exception of those to which a special international regime already applied. Consideration should be given to the relations between the producers and suppliers of those goods and services, on the one hand, and those for whom they were intended, on the other. Ultimately, it was a matter of developing norms with a view to the establishment of an international space technology market to which all States would have fair access.

32. With regard to the use of conference services, the assessment should not be confined to a purely statistical point of view, because the concrete results, namely the elaboration of norms governing outer space activities, must be taken into account.

33. Mr. OBAKPOLOR (Nigeria) said that the General Assembly had established the Committee on the Peaceful Uses of Outer Space in 1959, just when it was becoming apparent that outer space was to be the next frontier for human activity. Since then, his country had taken an interest and actively participated in the work of the various United Nations forums in that field. Its interest had been further strengthened by its conviction that outer space was the common heritage of mankind, with no defined national or geographical frontiers, and that space exploration and activities called for collective efforts world wide. In addition, there was a definite linkage between space exploration and the maintenance of international peace and security; lastly, space exploration had opened up a multitude of opportunities, particularly in the area of economic development and the social welfare of peoples, through international cooperation.

34. In that regard, the work of the Committee and its Legal Subcommittee had shown those bodies to be equal to the hopes invested in them; they had given legislative consideration to outer space activities so as to allay the fears of less technologically advanced countries. Both the legal and the political issues which were before the Subcommittee were fundamental to mankind's survival, and as such should be given high priority.

35. On 14 November 1967, Nigeria had acceded to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, which was the cornerstone of the legal regime governing international peaceful space activities, and it remained committed to the Treaty's provisions and goals. However, since the entry into force of that instrument on 27 January 1967, enormous technological advances had occurred which could not have been anticipated. It had thus become necessary to update the international legal regime in order to take account of those new realities.

36. Since the previous session of the Legal Subcommittee, there had been momentous positive developments in international relations, leading to reduced global tensions, the cessation of East-West hostilities and greater

(Mr. Obakpolor, Nigeria)

multilateral cooperation in solving regional and other problems. At the centre of such peaceful activities were the two major space Powers, the United States and the Soviet Union, and his country believed that the work of the Committee and the efforts undertaken world wide to maintain outer space for exclusively peaceful purposes would receive greater attention from the international community and would benefit from those positive developments.

37. The issue of nuclear power sources (NPS) had been discussed exhaustively at previous sessions of the two Subcommittees, and his country's views on that subject were well known. At the twenty-seventh session of the Scientific and Technical Subcommittee, a significant achievement had been made when the Subcommittee had reached a consensus on the scientific and technical guidelines for the use of NPS in outer space. Those guidelines were crucial to the issue of NPS aboard satellites and would facilitate early agreement on the aspects which remained to be settled in order to make possible a new legal regime on the question. He also noted that, at the twenty-ninth session of the Legal Subcommittee, the latter had reached a consensus on the legal principles for the use of NPS based on the earlier recommendations of the Scientific and Technical Subcommittee. He hoped that work on the seven remaining principles could be concluded at the current session.

38. However, that hope had been severely shaken when, at the twenty-eighth session of the Scientific and Technical Subcommittee, the United States had requested a review of principle 3, on which a consensus had been reached in both Subcommittees. That action not only posed a threat to the logical way in which the Committee was handling its Herculean task of reaching a consensus on the remaining principles, but it also raised doubts as to the sincerity and openness with which the members of the Subcommittee discussed issues of great importance to the very existence of mankind.

39. While appreciating the efforts made by the space Powers to further explore outer space for the benefit of mankind, and to turn the mysteries of outer space into a meaningful and practical instrument of scientific development, his country was none the less mindful of the inherent danger in the way in which such exploration was carried out and of the importance of limiting it to peaceful purposes.

40. Nuclear power sources were regarded as the most efficient system for outer space exploration and other interplanetary missions. In the view of his delegation and those of other Member States, compliance with safety regulations when NPS were used in outer space was the only thing that might prevent a world-wide catastrophe arising from the accidental re-entry of a NPS-powered space object; Nigeria had stressed that view in unequivocal terms at various sessions of the two Subcommittees and of the Committee itself. In the past, his delegation had stressed the inability of most developing countries to monitor the accidental re-entry of an NPS-powered space object and to launch clean-up operations in the event of such an object impacting in their territories. That was a serious issue which countries could not be allowed to settle themselves without discussing it at the international level

(Mr. Obakpolor, Nigeria)

and fixing a time-limit. The Subcommittee must therefore make progress on the remaining principles.

41. Nigeria was happy to see the inclusion of a new agenda item entitled "Consideration of the legal aspects related to the application of the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries", and was also glad of the establishment of a working group on the matter, which it saw as being in the best interests of all. It was an opportunity for the developing countries to state clearly and analyse what benefits and interests they hoped to obtain through space exploration and exploitation. The major space Powers and other technologically advanced countries, for their part, could now demonstrate by deeds, and not just by words how those beneifts might spread to all countries, particularly the disadvantaged developing countries.

42. Paragraphs 25 and 27 of General Assembly resolution 44/46 on ways and means of maintaining outer space for peaceful purposes and the spin-off benefits of space technology had continued to attract States' attention for obvious reasons. To maintain outer space for peaceful purposes required the cooperation of all. That could be achieved only through the cooperation of the major space Powers.

43. The design, launch and operation of space-bound satellites must conform to strict standards of safety so as to eliminate pollution and the exposure of human beings to radiation. Necessary information about launching space objects must be provided to the United Nations prior to each launch and cases of malfunction must also be immediately identified. Prompt and just reparation must also be made by launching States to victims of accidental crashes on their territory.

44. The issue of space debris had been discussed exhaustively in both Subcommittees, but without tangible results. His delegation believed that the worrisome problem of space debris from disabled craft must be urgently tackled to prevent future disasters in space and on Earth.

45. Above all, outer space itself must be defined and delimited so as to safeguard States' sovereignty and security while preserving space for common human endeavours. That issue had remained unresolved despite the spirited and concerted efforts of recent years. His delegation believed that the issue must be tackled decisively during the current session because of its implication for the territorial integrity of States, taking into account the Chicago Convention relating to territorial airspace.

46. It was obvious that the existing inequality of access of the developing countries to space science and technology resulted from the gap between them and the developed countries in scientific, technological and economic development. To eliminate that anomaly, Nigeria had called for the firm establishment of a global approach based on the tripod of common human

(Mr. Obakpolor, Nigeria)

interests, international cooperation and acceleration of socio-economic development. Any meaningful global approach had to be anchored in a sound legal framework aimed at securing access to outer space science and technology, guaranteeing the interests and benefits being sought and ensuring the cooperation being envisaged. Nigeria was convinced that the interests to be derived from outer space exploration and utilization could go a long way towards solving most of the afflictions of famine, ecological disasters and the numerous socio-economic hardships currently facing the developing countries.

47. His delegation wished further to reiterate its fear of the militarization of outer space. The 1967 Treaty stipulated that outer space should be maintained for peaceful purposes but provided no safeguard against the misinterpretation and manipulation of its objectives. While some had argued that the mandate of the Committee on the Peaceful Uses of Outer Space did not extend to disarmament questions, it was the view of his delegation that there was a linkage with the need to safeguard outer space from the arms race or any militarization whatsoever, those being inconsistent with the 1967 Treaty. Any extension of the arms race into outer space would pose a grave danger to mankind. Today, military spy satellites orbited the Earth and, as recent events had shown, could perform yeoman service. But who could tell what the morrow would bring? The Subcommittee could therefore not ignore that ominous development, for the military designs and activities of some States were capable of nullifying all the efforts of the Committee on the Peaceful Uses of Outer Space over the years in one fell swoop.

48. Despite the bleak picture painted by some developments, Nigeria believed that, given the spirit of international cooperation and understanding with which the Committee had carried out its work in the past, it would achieve appreciable progress during the session.

49. Mr. SATOH (Japan) said that, as to the definition and delimitation of outer space, his delegation continued to believe that there was no convincing scientific or practical reason for establishing a boundary between airspace and outer space. The absence of such a definition had not created practical problems nor had it been an obstacle, as was demonstrated by the dramatic progress made in the peaceful exploration and use of outer space over the previous 30 years. Delimitation without clear scientific criteria would not only be inappropriate but could also lead to a curtailing of future space activities.

50. As for the question of the character and use of the geostationary orbit, it was perfectly obvious that the geostationary orbit belonged to outer space and, accordingly, was governed by the 1967 Treaty. There was thus no need to formulate a special legal regime to regulate that orbit. While it was a finite natural resource and must be used efficiently and economically, the International Telecommunication Union (ITU) was responsible for addressing questions regarding its use, and had in fact adequately guaranteed the rational and equitable use of the orbit by all States.

(Mr. Satoh, Japan)

51. His delegation was pleased to see that the working group under the new item "Outer space benefits" would commence its work with a comprehensive review of the norms of international law and national legislatures relating to the exploration and use of outer space, with a view to further promoting international cooperation for the benefit and in the interests of all States.

52. His delegation noted with satisfaction that the preceding year, the Subcommittee had advanced in its work on the elaboration of draft principles relevant to the use of nuclear power sources in outer space by reaching a consensus on draft principle 3, Guidelines and criteria for safe use. It also noted with satisfaction that during the last meeting of the full Committee, progress had been made on draft principle 8, Responsibility, and draft principle 11, Relations with international treaties and agreements. On the other hand, his delegation regretted that during the most recent session of the Scientific and Technical Subcommittee, proposals to change the agreed text of draft principle 3 had been put forward by the United States and the International Atomic Energy Agency. The Legal Subcommittee should therefore concentrate during the current session on making progress on the remaining draft principles and not engage in discussions on draft principle 3, which would require further study by the Scientific and Technical Subcommittee.

53. With respect to each draft principle on nuclear power sources, his delegation basically supported the formulations contained in the seventh revised version submitted by Canada and Germany. It considered that both elements, namely, that under principle 2, notifying the Secretary-General of the presence on board of nuclear power sources, and that under principle 4, making a safety assessment of such sources publicly available prior to each launch, were particularly important as confidence-building measures in international relations. His delegation supported the methods and timing of such notification and safety assessment as described in the seventh revision.

54. Mr. BOYER (France) reiterated his delegation's well-known position that there was no doubt in its view that, for any question relating to disarmament or the arms race, the only suitable United Nations forum was the Conference on Disarmament. Therefore, neither the Committee on the Peaceful Uses of Outer Space nor its Subcommittees were competent to debate the matter.

55. Mr. BYKOV (Union of Soviet Socialist Republics), opposing the view just expressed by the representative of France, said that the Subcommittee had every right to consider questions relating to the prevention of an arms race in outer space. Without wishing to provoke a new debate on the question, his delegation felt obliged to state, as it and other delegations had done on many previous occasions, that the Subcommittee had made an outstanding contribution to the promotion of the peaceful uses of outer space, the purpose for which, its parent Committee had, as its name indicated, been expressly established. Accordingly, the work of the Conference on Disarmament and that of the Committee should be regarded as complementary.

56. Mr. GONZALEZ (Chile) said that he had some difficulty in accepting the French statement in practice. It was true that the Conference on Disarmament

(Mr. Gonzalez, Chile)

was a multilateral body which considered disarmament issues, that it had several committees, including an Ad Hoc Committee on the Prevention of an Arms Race in Outer Space, and that its efforts had been very productive. However, participation in the Ad Hoc Committee was very limited: only 39 countries were members, and many developing countries, such as Chile, were not represented on it, and therefore could not take part in its discussions. Disarmament, however, was universal in nature, because peace was indivisible. Furthermore, the Ad Hoc Committee had no mandate for negotiation. Accordingly, a de facto situation existed in which there was no negotiating body on disarmament issued within the United Nations. Moreover, it was inconceivable that the Outer Space Committee should have nothing to say about a question which was, after all, included in its mandate, since it had been expressly set up to deal with the peaceful uses of outer space. The work of the Conference on Disarmament could, in fact, complement that of the Outer Space Committee in that area.

57. Mr. ZAMELS (Argentina) said that he supported the comments made by the representative of Chile. Without entering into the substantive issue, he too believed that from the practical point of view, the Ad Hoc Committee on the Prevention of an Arms Race in Outer Space and the Outer Space Committee shared a common field - outer space. However, the two bodies were also working on very different aspects of the same question, and there must be an exchange of information between them.

58. Mr. VILLEGAS (Mexico) said that he supported the comments made by the two previous speakers; the questions involved were directly related to the mandate of the Outer Space Committee and of the Subcommittee, since they concerned the peaceful uses of outer space, and the mandate which the General Assembly itself had conferred upon the Committee and its Subcommittees was precisely to give priority to ensuring the peaceful uses of outer space.

59. Mrs. REDEKER (Germany) said that she unreservedly supported the statement made by the representative of France: she, too, believed that the Outer Space Committee and its Subcommittees had no mandate to discuss the arms race and disarmament, as those issues were within the purview of the Conference on Disarmament at Geneva.

MATTERS RELATING TO THE DEFINITION AND DELIMITATION OF OUTER SPACE AND TO THE CHARACTER AND UTILIZATION OF THE GEOSTATIONARY ORBIT, INCLUDING CONSIDERATION OF WAYS AND MEANS TO ENSURE THE RATIONAL AND EQUITABLE USE OF THE GEOSTATIONARY ORBIT WITHOUT PREJUDICE TO THE ROLE OF THE INTERNATIONAL TELECOMMUNICATION UNION (agenda item 4)

60. Mr. POSSO (Ecuador) said that his delegation had always maintained that the international community should not only promote the use of outer space for exclusively peaceful purposes, but should also prevent outer space from being used in the exclusive interest of States whose technical and scientific resources enabled them to dispense with international cooperation and not only

(Mr. Posso, Ecuador)

to explore, but to utilize outer space for their benefit alone. It was imperative that the exploration and utilization of outer space should be governed by international cooperation and solidarity, which alone could permit an equitable sharing of the benefits arising from the use of space resources. That was not a foregone conclusion when it was a question of the unlimited exploitation of a resource which essentially belonged to the international community and, in particular, to those of its members which - because of unique circumstances - had a special connection to that resource.

61. The chief obstacle to international cooperation also stemmed from the fact that science and technology were harnessed to goals of mass destruction. The Committee and its two Subcommittees were, of course, carrying out useful and commendable work, but they should make greater efforts to develop a type of international cooperation which would promote space activities, especially in the developing countries, and safeguard mankind from the risk which it faced as a result of the irrational use of outer space and the hegemonic designs of some Powers.

62. His country had not noted any substantial progress with regard to the definition of norms for the delimitation of outer space or to the use of the geostationary orbit; such norms were made necessary, however, by the sui generis nature of the orbit. The lack of progress was probably attributable to failure to recognize the principle that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all States, taking into particular account the needs of developing countries. Accordingly, the Working Group on that question should continue its activities and attach special importance, as it had done hitherto, to the geostationary orbit; the latter represented a limited and non-renewable natural resource, even if some parties with vested interests were endeavouring to dissociate the orbital phenomenon from factors relating to the planet, whereas it was perfectly obvious that the orbit in question owed its very existence to the Earth's motion.

63. His country had always maintained that the 1967 Treaty did not regulate the use of the orbit, which it did not even mention. Even assuming that the general principles laid down in the Treaty could be applied to the orbit, special legal provisions would be necessary in order to put an end to its current exploitation by States which flaunted their financial and technical capabilities, while ignoring the right of States constrained by their special geographical situation to protect that resource and to allocate the profits derived from its use to projects to promote the development, in the first place, of their populations, and secondly of the international community as a whole. Ecuador believed that the ways in which the orbit was currently used were irresponsible and irrational, not only because they ignored the interests of the international community, but also because they effectively prevented access to the orbit while overcrowding it to the point of saturation. It was essential, therefore, to establish a sui generis legal regime, based on equity and international cooperation, to guarantee that, in the future, the

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utilization of the geostationary orbit would be carried out for the benefit of mankind, taking into account the geographical situation of particular countries and their development needs.

64. Ecuador was convinced that the rights of the developing countries could be reconciled with those of the international community, the role of which was to guarantee the utilization of outer space for exclusively peaceful purposes. It therefore believed that defining a sui generis legal regime governing the use of the geostationary orbit was primarily the responsibility of the Legal Subcommittee. The International Telecommunication Union, a body which was essentially technical in nature, was perhaps not capable of doing so, and might give priority to other issues, such as the use of the frequency spectrum.

65. Nevertheless, his country remained open to any solution which was consistent with the principles he had outlined, provided that it guaranteed equitable access to the orbit and recognized the special rights of the equatorial countries.

66. Mr. KHABIROV (Union of Soviet Socialist Republics) said that, over the 25 years for which the Legal Subcommittee had been considering the question of the definition and delimitation of outer space, the arguments of those who supported such a delimitation and those who believed that it was pointless had been well known. The stalemate in the consideration of that question derived, in his view, not from legal or even from scientific and practical difficulties - because objective criteria existed for defining the boundary between the atmosphere and outer space - but from the lack of a political will to resolve it.

67. His delegation noted with satisfaction that an overwhelming majority of States had taken a position in favour of delimitation. Their arguments were solid and convincing. There were, indeed, two separate regimes: on the one hand, the regime governing airspace, over which States exercised absolute and inalienable sovereignty, and, on the other hand, the regime governing outer space, the utilization of which was, of course, free. For that reason, in his view, to state that there was currently no need to delimit outer space was not entirely consistent with the facts.

68. The Soviet Union had suggested various methods of reaching a solution to the issue of delimitation. He recalled the Soviet proposal of 4 April 1983 to the effect that, by agreement between States, the boundary between the atmosphere and outer space should be situated at a maximum altitude of 110 km above sea level. His delegation was, however, prepared to consider any other proposals concerning the determination of that altitude, for which reason it had put forward a compromise proposal in 1987 with a view to general agreement being reached on that subject. According to that proposal, any object launched into space would be considered to be in outer space during all phases of the post-launch flight in which it was at an altitude equal to or greater

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than 110 km above sea level. That proposal did not predetermine the position which States would ultimately adopt with regard to the question of State sovereignty over airspace and did not prejudge the question of whether there was a need to define the boundary between the atmosphere and outer space. In a spirit of goodwill, his country had stated that it supported the proposals to confirm the existence of a norm of customary space law whereby the lower boundary of outer space would be the lowest perigee of artificial Earth satellites.

69. During the previous year, the Subcommittee had not been far from adopting by consensus another proposal put forward by his delegation, which it still maintained: to adopt by consensus a decision to consider under agenda item 4 the legal aspects of the operation of aerospace vehicles at certain altitudes. In the view of the Soviet Union, the consideration of that question would make for a better understanding of the issues relating to the delimitation of outer space and a judgement as to the usefulness of subsequently developing norms and principles of international law governing the use of aerospace systems at certain altitudes, including norms relating to the right of innocent passage of aerospace vehicles over the airspace of other States.

70. The Soviet Union began with the premise that in many countries, scientific studies and research and development projects were being conducted, dealing with future aerospace systems capable of manoeuvring both in the atmosphere and in outer space. It was interesting to note that such systems had already been partially achieved, as shown by the development and operation of reusable spacecraft such as the United States space shuttle and the Soviet Buran shuttle, which had orbital modules capable of de-orbiting and landing normally. Aerospace systems had radically new functional characteristics which made them capable of the following operations: prolonged flight in the atmosphere at hypersonic speeds to reach orbit, rapid descent from space into the atmosphere in order to execute an aerodynamic manoeuvre, change of orbital plane and lateral manoeuvre upon de-orbiting in order to return to Earth, and the performance of special functions during suborbital flight.

71. The Working Group on agenda item 4 had considered that proposal. All speakers had supported it. His delegation saw that as a good sign. As the Chairman of the Working Group had noted, delegations had had time to reflect on the Soviet proposal, and it was possible that a consensus might be reached on that question at the current session. It should be recalled that at the previous session of the Subcommittee, the Soviet proposal had not aroused any direct opposition. Nevertheless, at that stage, some delegations had not been able to join the consensus. He hoped that they would now be able to do so. If the Subcommittee reached a decision by consensus, his delegation would be prepared to submit, at the next session of the Subcommittee, a set of draft articles dealing with the regulation of aerospace vehicle flights. An exchange of views could take place at the current session on conceptual approaches to the definition of the principal legal parameters of such regulation.

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72. Lastly, the consideration of the Soviet proposal, which was not necessarily linked to a definitive solution of the question of the upper boundary between airspace and outer space, could enable the Subcommittee to overcome its current impasse by steering the discussions into a parallel channel. If such a decision was taken, his country would not link the consideration of the legal questions concerning aerospace vehicle flights to a prior solution of the issue of delimitation, although the concrete link between those two questions was perfectly obvious.

73. Mr. BOYER (France), referring to the statement just made by the Soviet representative, noted that the latter had said that all speakers at the previous day's meeting of the Working Group had supported the Soviet proposal, which was not precisely the case. In fact, his delegation's position was that it could not systematically oppose in advance the consideration of any text, and was therefore not opposed to anyone submitting a text. On the other hand, his country did not believe that it was at all necessary at the present stage to define a study topic within the study topic - in other words, the definition and delimitation of outer space - by speaking, for example, of the aerospace vehicle regime; and it was even less appropriate to give any priority to that subject within the context of agenda item 4. If the Soviet Union wished to submit a text, it should do so, and other delegations would, on the one hand, see whether the text fell within the agenda item, namely, the delimitation of outer space, and, on the other hand, evaluate the text on its own merits.

74. Mr. KHABIROV (Union of Soviet Socialist Republics) said that the representative of France did not seem to have fully grasped the Soviet delegation's position. His delegation was not seeking to impose its views without anyone knowing what they were; it did not expect the members of the Subcommittee to support a proposal or a set of draft articles which had not yet been submitted. Its idea was that if the Subcommittee decided to consider the question under agenda item 4, consideration could then be given to the provisions of international law dealing with the use of aerospace vehicles. What was involved was an idea, a proposal, and not a set of draft articles. If the Subcommittee consented to the idea, his delegation would then be prepared to submit a set of draft articles at the next session. Naturally, no one was questioning the right of any delegation to submit the draft articles of its choice. For that reason, his delegation continued to believe that, when the Working Group on agenda item 4 had discussed the question, no delegation - that of France not excepted - had objected to the proposal.

75. Mr. KOVACS (International Telecommunication Union) said that it was apparent from the wording of item 4 of the Subcommittee's agenda that the same concerns were also apparent in the discussions at various conferences of the International Telecommunication Union (ITU). The points of view were, of course, very different - the analysis of and responses to problems being of a technical nature within ITU, as it was an organization specializing in telecommunications - but the main issues, such as the rational and equitable

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use of the geostationary orbit, were expressed in the legal instruments of ITU and in the various procedures and regulations in force.

76. In fact, the International Telecommunication Convention on the one hand recognized the right to equitable access to the geostationary orbit, and on the other hand requested that the two natural resources which were allied in that context - the geostationary orbit and the radio frequency spectrum - should be used in a rational and effective manner. The relevant article of the Radio Regulations stipulated that, in using the frequency bands, members should bear in mind that the geostationary orbit and its associated frequency bands were limited natural resources, and that their use should be rational, effective and economical, in accordance with the provisions of the Radio Regulations, so that all countries or groups of countries could have equitable access to those two resources.

77. In implementing the relevant provisions of the Radio Regulations, consideration should be given to the practical difficulties of satisfying two requirements, namely, effective use and equitable access. Various procedures had therefore been included in the Regulations in order to satisfy the two main concerns, with the result that some frequency bands would be governed, in some cases, by procedures in which equitable access prevailed, and in others, by procedures in which effective use was more important.

78. The principal model for effective use was what was termed the prior coordination procedure, whereby the use of an orbital position was coordinated bilaterally between the users of the orbital segment concerned. Such coordination was intended to prevent mutual interference; notice of the coordination agreements was then given to ITU, and the satellite network was registered in the Master International Frequency Register. Another model which guaranteed equitable access consisted of the orbital position/frequency plans. World planning conferences had drawn up plans in which positions and their associated frequency bands were guaranteed to each country for the duration of those agreements, even if, at the time when the plan was drawn up, the country concerned was not able to execute specific satellite projects.

79. In view of the advantages and disadvantages of those two models, the previous World Administrative Radio Conference, held in 1988 to discuss the use of the geostationary orbit, had established a third procedure which consisted of convening, where necessary, small-scale multilateral planning conferences between countries concerned in order to determine an orbital position, frequency bands and the regions served.

80. Lastly, in 1992 there would be a World Administrative Radio Conference at which the definition of the geostationary orbit and that of the lower Earth orbit would be considered. The agenda of the conference appeared in the Thirtieth Report by the International Telecommunication Union on telecommunications and the peaceful uses of outer space.

The meeting rose at 12.55 p.m.